

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11	BROCADE COMMUNICATIONS SYSTEMS, )	Case No.: 10-cv-03428-LHK
12	INC., a Delaware corporation, and FOUNDRY )	ORDER GRANTING PLAINTIFFS'
13	NETWORKS, LLC, a Delaware limited liability )	MOTION FOR PARTIAL SUMMARY
14	company, )	JUDGMENT DISMISSING
15	Plaintiffs and Counterclaim Defendants, )	INVALIDITY DECLARATORY RELIEF
16	v. )	COUNTERCLAIM AND INVALIDITY
17	A10 NETWORKS, INC., a California )	AFFIRMATIVE DEFENSE
18	corporation; LEE CHEN, an individual; )	REGARDING U.S. PATENT NOS.
19	RAJKUMAR JALAN, an individual; RON )	7,454,500; 7,581,009; 7,558,195; AND
20	SZETO, an individual; DAVID CHEUNG, an )	7,774,833
21	individual; LIANG HAN, an individual; and )	
22	STEVE HWANG, an individual, )	
23	Defendants and Counterclaimants.)	

On May 3, 2012, Plaintiffs Brocade Communications Systems, Inc. ("Brocade") and Foundry Networks, LLC ("Foundry") filed a motion for partial summary judgment based on the doctrine of assignor estoppel. On May 17, 2012, Defendants A10 Networks, Inc. and Defendants Lee Chen, Rajkumar Jalan, Ron Szeto, and Steve Hwang (collectively, "Defendants") filed an opposition. ECF No. 539. On May 24, 2012, Plaintiffs filed a reply. The Court held a hearing on Plaintiffs' motion on June 8, 2012. The pretrial conference in this matter is set for June 27, 2012;

1 the trial will begin on July 16, 2012. Because the parties require a ruling on this motion on an  
2 expedited basis, the Court will keep its analysis brief.

3 Plaintiffs move for partial summary judgment dismissing A10's counterclaim for  
4 declaratory relief of invalidity, as well as the affirmative defense of invalidity interposed by A10,  
5 Chen, and Jalan to Plaintiffs' claims for infringement of U.S. Patent Nos. 7,454,500 ("'500  
6 Patent"); 7,581,009 ("'009 Patent"); 7,558,195 ("'195 Patent"); and 7,774,833 ("'833 Patent"). *See*  
7 Mot. 1-2. Plaintiffs argue that under the doctrine of assignor estoppel, Jalan is estopped from  
8 challenging the validity of the '500, '009, and '195 Patents, on which he is listed as an inventor and  
9 which he assigned to Foundry. Similarly, Plaintiffs argue that Szeto is estopped from challenging  
10 the validity of the '833 Patent, on which he is listed as an inventor and which he assigned to  
11 Foundry. Mot. 2. Plaintiffs further argue that under the doctrine of assignor estoppel, A10 and  
12 Chen cannot assert invalidity of the '500, '009, '195, and '833 Patents because A10 and Chen are  
13 in privity with both Jalan and Szeto. *Id.* Finally, Plaintiffs argue that Jalan cannot assert the  
14 invalidity of the '833 Patent because Jalan and Szeto are in privity. *Id.* In short, Plaintiffs argue  
15 that: (1) A10 is estopped from asserting its invalidity counterclaims and invalidity affirmative  
16 defenses to Plaintiff's claims of infringement of the '500, '009, '195, and '833 Patents; and (2)  
17 Chen and Jalan are estopped from asserting their affirmative invalidity defenses to the '500, '009,  
18 '195, and '833 Patents.<sup>1</sup>

19 Having considered the submissions and arguments of the parties and the relevant law, the  
20 Court GRANTS Plaintiffs' motion for partial summary judgment.

21 **I. BACKGROUND**

22 The parties are familiar with the extensive factual and procedural background of this case,  
23 and the Court will not repeat it at length here. The Court refers the unfamiliar reader to its Orders  
24 of January 6, and June 12, 2012. See ECF Nos. 434, 438, 571.

25 On August 4, 2010, Brocade and Foundry filed a complaint against A10 and various  
26 individual defendants, including Jalan, Szeto, and A10's President, Lee Chen. ECF No. 1.  
27 Currently on the Third Amended Complaint ("TAC"), Plaintiffs allege infringement of ten claims

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28 <sup>1</sup> Szeto is not named as a defendant to any of Plaintiffs' patent infringement claims.

1 in six patents, theft of twenty trade secrets, infringement of five copyrights, and various state law  
2 claims. ECF No. 85.

3 In short, Plaintiffs allege that in 2004, Chen, a co-founder of Foundry (a wholly owned  
4 subsidiary of Brocade), secretly began to develop a new company, Raksha Networks, while still  
5 working at Foundry. *See TAC ¶¶ 26-28, 30.*<sup>2</sup> Raksha Networks initially developed security  
6 products “in the identity-based, bandwidth management space.” Opp’n 3 (citing Nguyen Decl. Ex.  
7 1 (Chen Dep. 116:18-118:8; 124:21-125:6; 145:2-6; 155:13-14). Chen left Foundry in August  
8 2004, and renamed his new company A10 Networks. *Id. ¶¶ 24, 30.* Plaintiffs allege that Chen  
9 recruited Foundry’s employees Jalan, Szeto, Han, and Hwang. *Id. ¶¶ 34, 38, 39.* Plaintiffs further  
10 allege that these former Foundry employees (including Chen) took Foundry’s intellectual property  
11 with them to A10. *Id.* According to Plaintiffs, A10 used this intellectual property to develop a  
12 competing product, the AX Series, which allegedly infringes several Brocade patents. *See id. ¶¶*  
13 31, 34, 38, 39. Brocade acquired Foundry in December 2008. *Id. ¶ 3.*

14 It is undisputed that Defendants Jalan and Szeto are former employees of Foundry. While  
15 employed at Foundry, Jalan was a named inventor of the ’195, ’009 Patent, and ’500 Patents. Jalan  
16 assigned his rights to the ’195, ’009, and ’500 Patents to Foundry. Similarly, while employed by  
17 Foundry, Szeto was a co-inventor of the ’833 Patent. Szeto assigned his patent rights in the ’833  
18 Patent to Foundry. Jalan and Szeto were subsequently hired by A10. The ’195, ’009, ’500, and  
19 ’833 Patents are now owned by Brocade. ECF No. 92 ¶ 68, 77, 86; Nguyen Decl. Ex. 23.

20 Additional facts are discussed below, as necessary, in the Court’s analysis.

## 21 II. LEGAL STANDARD

22 Summary judgment is appropriate if, viewing the evidence and drawing all reasonable  
23 inferences in the light most favorable to the nonmoving party, there are no genuine issues of  
24 material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);  
25 *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). At the summary judgment stage, the Court  
26 “does not assess credibility or weigh the evidence, but simply determines whether there is a  
27 genuine factual issue for trial.” *House v. Bell*, 547 U.S. 518, 559-60 (2006). A fact is “material” if

28 <sup>2</sup> Raksha means “security” in Hindi. Chen Dep. 47:11-12.

1 it “might affect the outcome of the suit under the governing law,” *Anderson v. Liberty Lobby, Inc.*,  
2 477 U.S. 242, 248 (1986), and a dispute as to a material fact is “genuine” if there is sufficient  
3 evidence for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.* “If the  
4 evidence is merely colorable, or is not significantly probative, summary judgment may be granted.”  
5 *Id.*

6 The moving party bears the initial burden of identifying those portions of the pleadings,  
7 discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. *Celotex*  
8 *Corp.*, 477 U.S. at 323. Where the moving party will have the burden of proof on an issue at trial,  
9 it must affirmatively demonstrate that no reasonable trier of fact could find other than for the  
10 moving party, but on an issue for which the opposing party will have the burden of proof at trial,  
11 the party moving for summary judgment need only point out “that there is an absence of evidence  
12 to support the nonmoving party’s case.” *Id.* at 325; *accord Soremekun v. Thrifty Payless, Inc.*, 509  
13 F.3d 978, 984 (9th Cir. 2007). Once the moving party meets its initial burden, the nonmoving  
14 party must set forth, by affidavit or as otherwise provided in Rule 56, “specific facts showing that  
15 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 250.

### 16 III. ANALYSIS

17 “Assignor estoppel is an equitable doctrine that prevents one who has assigned the rights to  
18 a patent (or patent application) from later contending that what was assigned is a nullity.”  
19 *Diamond Scientific Co. v. Amrico, Inc.*, 848 F.2d 1220, 1224 (Fed. Cir. 1988). Absent exceptional  
20 circumstances such as “an express reservation by the assignor of the right to challenge the validity  
21 of the patent or an express waiver by the assignee of the right to assert assignor estoppel, one who  
22 assigns a patent surrenders with that assignment the right to later challenge the validity of the  
23 assigned patent.” *Mentor Graphics Corp. v. Quickturn Design Sys., Inc.*, 150 F.3d 1374, 1378  
24 (Fed. Cir. 1998). The application of the assignor estoppel doctrine is within the “sound discretion”  
25 of the trial court. *Carroll Touch, Inc. v. Electro Mech. Sys.*, 15 F.3d 1573, 1579 (Fed. Cir. 1993).

#### 26 A. Jalan and Szeto Are Estopped From Challenging Their Own Patents

27 A10 essentially concedes that both Jalan and Szeto are each estopped from challenging the  
28 validity of their respective patents. Indeed, A10 has stipulated that Jalan cannot challenge the

1 validity of the '195, '009, and '500 Patents. ECF No. 309, at 10; ECF No. 361 ¶ 2. Moreover,  
2 although Plaintiffs have not brought a patent infringement claim against Szeto, for the reasons  
3 explained below, Szeto is also estopped from challenging the validity of the '833 Patent. To the  
4 extent A10 challenges the application of assignor estoppel to Jalan and Szeto as to their own  
5 patents, the Court addresses those arguments below.

6 As stated above, Jalan is an inventor of the inventions claimed by '195, '009, and '500  
7 Patents. Szeto is an inventor of the invention claimed by the '833 Patent. Jalan and Szeto assigned  
8 their inventions to their then-employer, Foundry, which then prosecuted these four patents. *See*  
9 ECF No. 85 ¶ 49. Jalan and Szeto signed standard inventor's oaths in support of their patent  
10 applications, stating, "I believe I am the original, ... first and joint inventor... of the subject matter  
11 which is claimed and for which a patent is sought." ECF No. 220, Exs. I and J.

12 To the extent A10 argues that assignor estoppel cannot equitably apply to Jalan or Szeto as  
13 to their own patents, those arguments are unpersuasive. First, A10 suggests that because Jalan and  
14 Szeto assigned their inventions to Foundry before the filing of the patent applications, Jalan and  
15 Szeto cannot have vouched that the assigned patent rights had any value. Opp'n 6. Therefore, A10  
16 contends that Jalan and Szeto cannot have implicitly represented that the patent rights were not  
17 worthless. *See Diamond Scientific*, 848 F.2d at 1224. This reasoning is contrary to Federal Circuit  
18 precedent. An inventor who assigns rights to a pending patent application is estopped from  
19 challenging the validity of the patent as ultimately granted. *Id.* at 1226 ("The fact is that [the  
20 inventor] assigned the *rights* to his invention, irrespective of the particular *language* in the claims  
21 describing the inventions when the patents were ultimately granted.") (emphasis in original).  
22 Similarly, an inventor who assigns rights to all his inventions prior to the filing of a patent  
23 application on any particular invention is estopped from challenging validity of any issued patents.  
24 *Id.* ("It is also irrelevant that, at the time of the assignment, [the inventor's] patent applications  
25 were still pending and the Patent Office had not yet granted the patents.").

26 A10 also argues that because the United States Patent and Trademark Office ("USPTO")  
27 "has rejected all ten claims currently in issue as invalid" during ongoing reexaminations, it is  
28 against the public interest to allow enforcement of these claims against the assignors, Jalan and

Szeto. Op. at 1, 5-6. As an initial matter, these USPTO rejections are in the context of Office Actions in ex parte reexaminations; they are not final findings of invalidity. *Volterra Semiconductor Corp. v. Primarion, Inc.*, 796 F. Supp. 2d 1025, 1042 (N.D. Cal. 2011) (“[P]reliminary decisions and actions by the PTO in the course of a reexamination proceeding are not probative of invalidity.”). Moreover, “[a]ssignor estoppel does not preclude the estopped party from arguing that the patentee is itself collaterally estopped from asserting a patent found invalid in a prior proceeding.” *Mentor* at 1379 (citing *Blonder-Tongue Lab., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313 (1971)). Thus, even if assignor estoppel applies to Jalan and Szeto, Jalan and Szeto would not be precluded from arguing that Plaintiffs are collaterally estopped from arguing patent infringement if there is a final finding of invalidity in another proceeding. During the pendency of this action, there has been no such final finding of invalidity in another proceeding. Accordingly, A10’s argument based on the USPTO reexamination proceedings is unavailing.

In summary, Jalan assigned the rights to his inventions, as claimed in the ’195, ’009, and ’500 Patents. Therefore, Jalan is estopped from challenging the validity of the ’195, ’009, and ’500 Patents. *Mentor Graphics*, 150 F.3d at 1378. Similarly, Szeto assigned the rights to his invention, as claimed in the ’833 Patent. Thus, Szeto is estopped from challenging the validity of the ’833 Patent. *Id.*

#### B. Privity of Remaining Defendants

“Assignor estoppel also prevents parties in privity with an estopped assignor from challenging the validity of the patent.” *Id.* at 1379. The Federal Circuit has developed a broad test for finding privity, based upon a balance of the equities. *See Shamrock*, 903 F.2d at 793 (“If an inventor assigns his invention to his employer company A and leaves to join company B, whether company B is in privity and thus bound by the doctrine will depend on the equities dictated by the relationship between the inventor and company B in light of the act of infringement. The closer that relationship, the more the equities will favor applying the doctrine to company B.”). “Whether two parties are in privity depends on the nature of their relationship in light of the alleged infringement.” *Mentor Graphics*, 150 F.3d at 1379. “The closer that relationship, the more the equities will favor applying the doctrine’ of assignor estoppel.” *Id.* (quoting *Shamrock*, 903 F.2d at

1 793). “Assessing a relationship for privity involves evaluation of all direct and indirect contacts.”  
2 *Id.* (quoting *Intel Corp. v. U.S. Int'l Trade Comm'n*, 946 F.2d 821, 838 (Fed. Cir. 1991)). “What is  
3 significant is whether the ultimate infringer availed itself of the inventor’s ‘knowledge and  
4 assistance’ to conduct infringement.” *Intel*, 946 F.2d at 839 (quoting *Shamrock*, 903 F.2d at 794).

5 Plaintiffs argue that the facts of this case are materially indistinguishable from the facts in  
6 *Shamrock*, where the Federal Circuit affirmed the district court’s finding of privity on summary  
7 judgment. *See Mot. 2.* The parties agree that *Shamrock* did not establish necessary elements for a  
8 finding of privity, but rather enumerated factors that supported a finding of privity in that case, not  
9 all of which are relevant to finding privity in other circumstances. In *Shamrock*: (1) the  
10 assignor/inventor was a high level employee at his new employer; (2) the assignor/inventor owned  
11 shares in his new employer; (3) as soon as the assignor/inventor was hired, the new employer built  
12 facilities for performing the infringing activity; (4) the assignor/inventor oversaw the design and  
13 construction of those facilities; (5) the assignor/inventor was hired in part to start up the infringing  
14 operations; (6) the decision to begin the infringing operation was made jointly by the  
15 assignor/inventor and the president of his new employer; (7) the infringing product reached the  
16 market with reasonable speed after hiring the assignor/inventor; and (8) the assignor/inventor was  
17 in charge of his new employer’s infringing operations. *See Shamrock*, 903 F.2d at 794. The Court  
18 agrees with Plaintiffs that *Shamrock* provides useful, although not dispositive, guidance. With  
19 *Shamrock* as a guide, the Court addresses the various relationships at issue here.

## 20           **1. Privity Between Jalan and A10**

21 As discussed below, Jalan’s leadership role in developing the AX Series for A10 and other  
22 evidence suggesting a close relationship between Jalan and A10, including evidence that parallels  
23 the eight *Shamrock*, 903 F.2d at 794, factors, support a finding of privity between Jalan and A10.

24           *Whether the Inventor/Assignor Left the Plaintiff Company to Assume a Leadership Role at*  
25 *the Defendant Company.* In *Shamrock*, the Federal Circuit found it significant that the  
26 assignor/inventor left the plaintiff company to join the defendant company as vice president in  
27 charge of operations. *See* 903 F.2d at 794. Here, it is undisputed that Jalan left Foundry in  
28 December 2004; began working for A10 in January 2005; and has served as A10’s Chief

1 Technology Officer (“CTO”) since 2008. Plaintiffs assert that there is no genuine dispute of  
2 material fact that this *Shamrock* factor weighs in favor of finding privity here. A10, on the other  
3 hand, asserts that this factor does not weigh in favor of finding A10 in privity with Jalan because:  
4 (1) Jalan joined A10 in 2005 as a part-time, unpaid consultant; (2) Jalan is not a founder of A10;  
5 (3) Jalan is a mere employee and does not control A10’s activities. Opp’n 9-10. None of these  
6 facts raises a genuine dispute of material fact.

7 A10 concedes that Jalan’s “involvement with the AX Series began in late Q4 of 2005 when  
8 he participated in design discussions” and “code reviews” and “provided some input on the design  
9 framework” of the AX Series device. Opp’n 3-4. In light of these concessions, and other evidence  
10 that Jalan was the “Chief Architect of A10 Networks . . . responsible for the AX Series’  
11 architectural design,” Nguyen Decl. Ex. 10, at 4, it is immaterial whether Jalan was initially a part-  
12 time consultant or did not actually write any code for the AX Series. Opp’n 9-10 (citing Nguyen  
13 Decl. Ex. 1, at 158:4-8, 161:2-8). An inventor/assignor need not be a full-time employee for  
14 privity to apply. *See Designing Health, Inc. v. Erasmus*, 98-CV-4758-LGB, 2001 WL 36239750,  
15 at \*1-2 (C.D. Cal. Apr. 24, 2001) (finding privity between consultant and defendant company); *see*  
16 also *BASF Corp. v. Aristo, Inc.*, 2:07 CV 222 PPS, 2012 WL 1933700, at \*15 (N.D. Ind. May 29,  
17 2012) (finding privity between “mere consultant” and defendant company where consultant played  
18 a significant role in the accused product’s design and operations). Moreover, whether or not Jalan  
19 actually wrote the code to the accused AX Series is also immaterial. *BASF Corp.*, 2012 WL  
20 1933700, at \*15 (finding privity between consultant and defendant company, even though  
21 consultant did not “actually sit down and operate the [infringing product]”). Privity does not  
22 require that the assignor directly design the infringing features of the accused product. *Mentor*  
23 *Graphics*, 150 F.3d at 1379 (finding privity between two companies, even though the assignor  
24 company did not assist in developing the accused product). “What is significant is whether the  
25 ultimate infringer availed itself of the inventor’s ‘knowledge and assistance’ to conduct  
26 infringement.” *Intel*, 946 F.2d at 839 (quoting *Shamrock*, 903 F.2d at 794). Although *the degree*  
27 *to which* A10 availed itself of Jalan’s knowledge and assistance is disputed, it is undisputed that  
28

1 A10 availed itself of Jalan's knowledge and assistance to develop the accused AX Series. A10 has  
2 failed to raise a genuine dispute of material fact as to the first *Shamrock* factor.

3 *The Assignor/Inventor's Ownership Stake in the Defendant Company.* The *Shamrock* court  
4 also found it significant that the inventor/assignor owned 50,000 shares of the Defendant  
5 company's stock. 903 F.2d at 789. It is undisputed that Jalan owns more than one million shares  
6 or options to purchase shares in A10. Jalan Dep. Tr. 277:1-6; 279:4-14; Nguyen Decl. Ex. 4. A10  
7 argues there is a material factual dispute as to this factor because one million shares represent a less  
8 than 1% ownership stake of A10. Nguyen Decl. Ex. 6, at 62, 64. Although A10 is correct that 1%  
9 ownership is less than the amount of ownership in some cases finding privity, the Federal Circuit  
10 has not set a minimum percentage ownership threshold for a finding of privity. Indeed, in *Mentor*  
11 *Graphics*, the Federal Circuit noted that mere "shareholder" status was a factor favoring a finding  
12 of privity. *Mentor Graphics*, 150 F.3d at 1375 (citing *Shamrock*, 903 F.2d at 794). The *Shamrock*  
13 court found 50,000 shares, without even considering its percentage of ownership, a factor favoring  
14 a finding of privity. 903 F.2d at 794. Similarly, a sister court has noted that a "considerable  
15 financial interest in . . . the defendant corporation," such as the 50,000 shares in *Shamrock*, weighs  
16 in favor of finding privity between the assignor/inventor and the defendant corporation. See  
17 *Acushnet Co. v. Dunlop Maxfli Sports Corp.*, CIV. A. 98-717-SLR, 2000 WL 987979, at \*3 (D.  
18 Del. June 29, 2000)) (citing *Shamrock*, 903 F.2d at 794). At one million shares or options to  
19 purchase shares, Jalan's undisputed ownership stake in A10 is a considerable, albeit not  
20 controlling, financial interest, which weighs in favor of a finding of privity between Jalan and A10.  
21 Accordingly, A10 has failed to raise a genuine dispute of material fact as to the second *Shamrock*  
22 factor.

23 *The Defendant Company Changed Course from Manufacturing Non-Infringing Goods to*  
24 *Processing the Infringing Product After the Inventor Was Hired.* The *Shamrock* court found it  
25 significant that the defendant company was originally "formed in 1982 to [perform non-infringing  
26 processes]; yet as soon as [the inventor/assignor] was hired in 1983, [the defendant company] built  
27 facilities for processing [the infringing product]." 903 F.2d at 794. Here, it is undisputed that  
28 Jalan started work at Chen's company in January 2005, when it was still named Raksha Networks

1 and not yet manufacturing the AX Series devices. A10 concedes that Raksha Networks initially  
2 “develop[ed] products in the identity-based, bandwidth management space.” Opp’n 2 (citing  
3 Nguyen Decl. Ex. 1 (Chen Dep. 116:18-118:8 (noting that Raksha was “more in the security  
4 area”); 124:21-125:6; 145:2-6; 155:13-14 (noting that Raksha was “doing security product)).  
5 Indeed, Raksha means “security” in Hindi. Chen Dep. 47:11-12. There is no evidence that Raksha  
6 Networks began development of the AX Series device. Indeed, it is undisputed that the initial  
7 specification for what would become the AX Series devices was not created until November 2005.  
8 Opp’n 10 (citing Nguyen Decl. Ex. 9). A10 concedes that Jalan’s “involvement with the AX  
9 Series began in late Q4 of 2005 when he participated in “design discussions” and “code reviews.”  
10 Opp’n 3-4. The fact that Jalan may have worked initially on other projects, as A10 contends,  
11 merely shows that A10 changed course to develop the accused AX Series device after Jalan began  
12 working for A10. Thus, the third *Shamrock* factor supports a finding of privity between Jalan and  
13 A10.

14       *The Assignor’s Role in the Infringing Activities.* The *Shamrock* court found it significant  
15 that the inventor/assignor oversaw the design and construction of the facilities used for  
16 infringement. 903 F.2d at 794. Although construction of production facilities is not at issue here,  
17 it is undisputed that Jalan was involved in the design of the AX Series, at least by participating in  
18 “design discussions” and “code reviews,” and “provid[ing] some input on the ‘design framework’”  
19 of the AX Series device. Opp’n 3-4; Jalan Dep. at 18:17-23:24. Moreover, A10 has not refuted the  
20 evidence that Jalan was considered the “chief architect” and admitted that he is “responsible for the  
21 AX Series’ architecture design.” Nguyen Decl. Ex. 10, at 4; *see also* Nguyen Decl., Ex. 8 at 34:17-  
22 35:12 (Szeto Dep.). A10 cites evidence that Jalan’s work did not directly contribute to the  
23 allegedly infringing GSLB or HA features of the AX Series devices. Opp’n 10-11 (citing Nguyen  
24 Decl. Ex. 4, at 127:16-132:22; Mosko Decl. Ex. 8, at 14:12-22:22; Nguyen Decl. Ex. 4, at 51:2-  
25 53:4; Mosko Decl. Ex. 5, at 256:2-18). However, even if this evidence were uncontested, it  
26 would not be enough to raise a genuine dispute of material fact. The Federal Circuit does not  
27 require that the assignor directly design infringing features of an accused product in order to find  
28 privity between the assignor and the defendant company. *See, e.g., Mentor Graphics*, 150 F.3d at

1 1379; *see also Synopsis, Inc. v. Magma Design Automation, Inc.*, 04-CV-3923-MMC, 2005 WL  
2 1562779, at \*6 (N.D. Cal. July 1, 2005) (“The Federal Circuit, however, has not required that the  
3 assignor be personally involved in designing the allegedly infringing aspects of a product before  
4 finding the doctrine of assignor estoppel applicable.”). Accordingly, the fourth *Shamrock* factor  
5 weighs toward finding privity between Jalan and A10.

6 *Whether the Inventor Was Hired in Part to Start the Infringing Operations.* In *Shamrock*,  
7 the Federal Circuit gave weight to the fact that the inventor/assignor was hired in part to start up  
8 the defendant company’s infringing operations. 903 F.2d at 794. A10 submits evidence that Chen  
9 hired Jalan to design a multi-core, shared memory architecture and to provide Jalan with health  
10 insurance rather than to start up A10’s production of the accused AX Series devices. Opp’n 11  
11 (citing Nguyen Decl. Ex. 1, at 156:4-157:23). Although A10 raises a dispute as to whether  
12 designing the accused AX Series devices motivated Chen’s desire to hire Jalan, this dispute does  
13 not preclude a finding that Jalan is in privity with A10. Indeed the Federal Circuit has held that an  
14 “illicit purpose is not necessary to conclude that there was privity.” *Intel*, 946 F.2d at 839. Even if  
15 A10 has raised a dispute as to this factor, the dispute is not material because resolving the dispute  
16 in A10’s favor would not require a finding of “no privity,” especially in light of the other  
17 undisputed facts. Accordingly, A10 has not raised a genuine dispute as to the fifth *Shamrock* factor  
18 that would preclude a finding of privity between Jalan and A10.

19 *Whether the Decision to Manufacture the Infringing Product Was Made Partly by the*  
20 *Inventor.* The *Shamrock* court found it significant that the decision to begin [the infringing  
21 process] was made jointly by [the inventor/assignor] and the president of [the defendant  
22 company].” 903 F.2d at 794. A10 argues it raises a genuine dispute of material fact by pointing to  
23 evidence that Chen was the sole decision-maker at A10. Opp’n 11; Nguyen Dec. Ex. 17, at 1;  
24 Nguyen Decl. Ex. 18, at 1. However, A10 does not dispute that Jalan was the “ultimate authority”  
25 on all technical decisions at A10, and that Jalan’s authorization was required before any major and  
26 minor releases of the AX software. Gambhir Decl. Ex. 1 (Yang Dep. 27:3-22); Nguyen Decl. Ex.  
27 13, at 24-26. Although the parties dispute whether Chen made the ultimate decision, it is  
28 undisputed that Jalan participated in decisions related to the manufacture of the accused AX Series

1 device. Even if A10 has raised a dispute as to whether Chen ultimately made the decision to  
2 manufacture the AX Series device alone or in concert with Jalan, this factual dispute is immaterial.  
3 Resolving this dispute in A10's favor would not require a finding of "no privity." Accordingly,  
4 A10 has failed to raise a genuine dispute as to the sixth *Shamrock* factor that would preclude a  
5 finding of privity between Jalan and A10.

6 *Whether the Defendant Company Began Manufacturing the Accused Product Shortly After*  
7 *Hiring the Inventor/Assignor.* The *Shamrock* court found it significant that the defendant company  
8 began the alleged infringing activity within three years of hiring the inventor/assignor. 903 F.2d at  
9 794. A10 concedes that it took A10 nearly two years to develop the AX Series device after hiring  
10 Jalan. A10 attempts to raise a genuine dispute of material fact by stating that this period was  
11 significantly slower than the time it took Brocade to develop its ServerIron product. Opp'n 11  
12 (citing Nguyen Decl. Ex. 1 at 53:10-19). Even if this is true, it does not raise a genuine issue of  
13 material fact. A10 began manufacturing the accused product two years after hiring Jalan whereas  
14 the defendant company in *Shamrock* did so three years after hiring the inventor/assignor. This  
15 seventh *Shamrock* factor weighs in favor of finding privity here.

16 *Whether the Inventor/Assignor Was in Charge of the Infringing Operation.* The *Shamrock*  
17 court found it significant that the inventor/assignor was in charge of the allegedly infringing  
18 operation. 903 F.2d at 794. The undisputed fact is that Jalan is now A10's CTO and that Jalan was  
19 "responsible for the AX's architecture design." A10 attempts to raise a genuine dispute of material  
20 fact by emphasizing that Jalan was initially a part-time consultant. This fact is immaterial. An  
21 inventor/assignor need not be a full-time employee for privity to apply. *See Designing Health,*  
22 *Inc.*, 2001 WL 36239750, at \*1-2; *see also BASF Corp.*, 2012 WL 1933700, at \*15. As the Federal  
23 Circuit has stated "[w]hat is significant is whether the ultimate infringer availed itself of the  
24 inventor's 'knowledge and assistance' to conduct infringement." *Intel*, 946 F.2d at 839 (quoting  
25 *Shamrock*, 903 F.2d at 794). Here it is undisputed that as a part-time consultant Jalan participated  
26 in "design discussions" and "code reviews," and "provided some input on the 'design framework'"  
27 of the AX Series device. Opp'n 3-4; Jalan Dep. at 18:17-23:24. Moreover, it is undisputed that  
28 Jalan eventually had a supervisory role over the development of the AX Series device. Although

1       *the degree to which and when* A10 availed itself of Szeto's knowledge and assistance is disputed, it  
2       is undisputed that A10 availed itself of Szeto's knowledge and assistance to develop the AX Series.  
3       Accordingly, A10 has failed to raise a genuine dispute as to this eighth and final *Shamrock* factor  
4       that would preclude a finding of privity between Jalan and A10.

5       In sum, the Court has considered the *Shamrock* factors and finds that they either  
6       indisputably weigh in favor of finding that Jalan and A10 are in privity, or A10 has failed to raise a  
7       *genuine* dispute over a fact that would preclude a finding of privity. Moreover, it is undisputed that  
8       Jalan assigned his interest in his patents to Foundry before assuming a leadership role at A10, and  
9       was compensated in part with a substantial ownership stake in A10, where he managed an  
10      engineering team that designed and developed the allegedly infringing AX Series. After  
11      considering all of the undisputed facts, the Court is compelled to conclude that A10 "availed itself  
12      of [Jalan's] 'knowledge and assistance'" in developing the AX Series. *Intel*, 946 F.2d at 839  
13      (quoting *Shamrock*, 903 F.2d at 794). Accordingly, the Court finds that Jalan and A10 are in  
14      privity, and A10 is therefore estopped from arguing that the '195, '009, and '500 Patents are  
15      invalid.

## 16                  **2. Privity between Szeto and A10**

17       Like Jalan, Szeto's undisputed leadership role in developing the AX Series for A10  
18       supports a finding of privity between Szeto and A10. As with Jalan, the Court considers the  
19       *Shamrock* factors as a framework for its privity analysis. *Shamrock*, 903 F.2d at 794.

20       *Whether the Inventor/Assignor Left the Plaintiff Company to Assume a Leadership Role at*  
21       *the Defendant Company.* It is undisputed that Szeto left Foundry in 2005, and since 2005, Szeto  
22       has been an A10 Director of Software (Senior Director since 2011). Opp'n 4 (citing Nguyen Decl.  
23       Ex. 8, at 11:21-22; 12:4-12). Plaintiffs assert that there is no genuine dispute of material fact that  
24       this *Shamrock* factor weighs in favor of finding that A10 is in privity with Szeto. A10 asserts that  
25       this factor does not weigh in favor of finding A10 in privity with Szeto because: (1) when Szeto  
26       first joined A10, he was working on the EX series, which is not accused of infringement; (2) Szeto  
27       is not a founder of A10; and (3) Szeto is a mere employee and does not control A10's activities.

1 Opp'n 9-10. None of these facts raises a genuine dispute of material fact as to this *Shamrock*  
2 factor.

3 A10 concedes that Szeto “wrote some code for the AX Series device” and “provided some  
4 input on the ‘design framework’” of the AX Series device. Opp'n 4 (citing Nguyen Decl. Ex. 8, at  
5 35:3-16; 35:21-23). A10 also concedes that Szeto had a “supervisory” role and that “several  
6 people responsible for the actual coding of the AX Series reported to Szeto.” *Id.* (citing Nguyen  
7 Decl. Ex. 8, at 36:6-37:10). In light of these concessions, and other evidence that Szeto “oversaw  
8 all AX Series development,” Nguyen Decl. Ex. 10, at 4, it is immaterial whether Szeto initially  
9 worked on a product that is not accused of patent infringement. As the Federal Circuit has stated  
10 “[w]hat is significant is whether the ultimate infringer availed itself of the inventor’s ‘knowledge  
11 and assistance’ to conduct infringement.” *Intel*, 946 F.2d at 839 (quoting *Shamrock*, 903 F.2d at  
12 794). Although *the degree to which and when* A10 availed itself of Szeto’s knowledge and  
13 assistance is disputed, it is undisputed that A10 availed itself of Szeto’s knowledge and assistance  
14 to develop the AX Series. Accordingly, A10 has failed to raise a genuine dispute of material fact  
15 as to the first *Shamrock* factor.

16 *The Assignor/Inventor’s Ownership Stake in the Defendant Company.* The *Shamrock* court  
17 also found it significant that the inventor/assignor owned 50,000 shares of the defendant  
18 company’s stock. 903 F.2d at 789. It is undisputed that Szeto owns more than 700,000 shares of  
19 A10 stock. Nguyen Decl. Ex. 8 (Szeto Dep. 19:2-4;164:4-18); *id.* Ex. 6, at 13, 64). For the reasons  
20 explained in Section III.B.1, A10 has failed to raise a genuine dispute of material fact as to the  
21 second *Shamrock* factor. Accordingly, this factor weighs in favor of finding A10 in privity with  
22 Szeto.

23 *The Defendant Company Changed Course from Manufacturing Non-Infringing Goods to  
24 Processing the Infringing Product After the Inventor Was Hired.* A10 concedes that Raksha  
25 Networks “develop[ed] products in the identity-based, bandwidth management space.” Opp'n 2  
26 (citing Nguyen Decl. Ex. 1 (Chen Dep. 116:18-118:8; 124:21-125:6; 145:2-6; 155:13-14). It is  
27 also undisputed that the initial specification for what would become the AX Series devices was not  
28 created until November 2005. Opp'n 10 (citing Nguyen Decl. Ex. 9). Finally, it is undisputed that

1 Szeto started work at A10 in June 2005, when A10 was not yet manufacturing the AX Series  
2 devices. Opp'n 10 (citing Nguyen Decl. Ex. 8, at 15:3-8). For the reasons explained in Section  
3 III.B.1, A10 has failed to raise a genuine dispute as to the third *Shamrock* factor. Accordingly, this  
4 factor weighs in favor of finding A10 in privity with Szeto.

5 *The Assignor's Role in the Infringing Activities.* It is undisputed that Szeto was involved in  
6 the design of the AX Series, in that he "wrote some code for the AX Series device" and "provided  
7 some input on the 'design framework'" of the AX Series device. Opp'n 4 (citing Nguyen Decl. Ex.  
8, at 35:3-16; 35:21-23). A10 also concedes that Szeto had a "supervisory" role and that "several  
9 people responsible for the actual coding of the AX Series reported to Szeto." *Id.* (citing Nguyen  
10 Decl. Ex. 8, at 36:6-37:10). In light of these concessions, and other evidence that Szeto "oversaw"  
11 all AX Series development," Nguyen Decl. Ex. 10, at 4, it is immaterial whether Szeto designed  
12 the packet filtering capabilities accused of infringing the '833 Patent or when in 2005 Szeto began  
13 writing code for the AX Series device. Opp'n 11 (citing Szeto Decl. ¶ 10). Even if A10's  
14 allegations were uncontested, they would not raise a genuine dispute of material fact. The  
15 Federal Circuit does not require that the assignor directly design infringing features in order to find  
16 privity. *See, e.g., Mentor Graphics*, 150 F.3d at 1379; *see also Synopsis, Inc. v. Magma Design*  
17 *Automation, Inc.*, 04-CV-3923-MMC, 2005 WL 1562779, at \*6 (N.D. Cal. July 1, 2005) ("The  
18 Federal Circuit, however, has not required that the assignor be personally involved in designing the  
19 allegedly infringing aspects of a product before finding the doctrine of assignor estoppel  
20 applicable."). Accordingly, the fourth *Shamrock* factor weighs toward a finding of privity between  
21 A10 and Szeto.

22 *Whether the Inventor Was Hired in Part to Start the Infringing Operations.* A10 argues  
23 that Chen did not hire Szeto for his expertise in packet filtering, because Szeto's first projects at  
24 A10 involved the EX devices, which are not accused of infringing Brocade's patents. Opp'n 11  
25 (citing Nguyen Decl. Ex. 8, at 28:21-29:15). Although A10 raises a dispute as to whether  
26 designing the accused AX Series devices motivated Chen's desire to hire Szeto, this dispute does  
27 not preclude a finding that Szeto is in privity with A10. Indeed the Federal Circuit has held that an  
28 "illicit purpose is not necessary to conclude that there was privity." *Intel*, 946 F.2d at 839. Even if

1 A10 has raised a dispute as to this factor, the dispute is not material because it does not require a  
2 finding of “no privity,” especially in light of the other undisputed facts. Accordingly, A10 has not  
3 raised a genuine dispute as to the fifth *Shamrock* factor that would preclude a finding of privity  
4 between Szeto and A10.

5 *Whether the Decision to Manufacture the Infringing Product Was Made Partly by the*  
6 *Inventor.* As with Jalan, A10 attempts to raise a genuine dispute of material fact by pointing to  
7 evidence that Chen, and not Szeto, was the sole decision-maker at A10. Opp’n 11; Nguyen Decl.  
8 Ex. 17, at 1; Nguyen Decl. Ex. 18, at 1. Even if A10 has raised a dispute as to whether Chen  
9 ultimately made the decision to manufacture the AX Series device alone or in concert with Szeto,  
10 this factual dispute is immaterial, because resolving it in A10’s favor would not require a finding of  
11 “no privity.” Accordingly, A10 has failed to raise a genuine dispute as to the sixth *Shamrock*  
12 factor that would preclude a finding of privity between Szeto and A10.

13 *Whether the Defendant Company Began Manufacturing the Accused Product Shortly After*  
14 *Hiring the Inventor/Assignor.* A10 argues that it took A10 nearly two years to develop the AX  
15 Series device after hiring Szeto. Opp’n 11 (citing Nguyen Decl. Ex. 4, at 18:6-23). However, it is  
16 undisputed that Szeto started work at A10 in June 2005, and the initial specification for what would  
17 become the AX Series device was created in November 2005. A10 attempts to raise a genuine  
18 dispute of material fact by stating that the two year period was significantly slower than the time it  
19 took Brocade to develop its ServerIron product. Opp’n 11 (citing Nguyen Decl. Ex. 1 at 53:10-19).  
20 However, even if this is true, it does not raise a genuine dispute of material fact because the  
21 *Shamrock* court found an even longer delay -- three years from the hiring of an inventor/assignor to  
22 the defendant company’s start of manufacturing the accused product -- as a factor weighing in  
23 favor of a finding of privity. 903 F.2d at 794. Thus, A10 does not raise a genuine dispute of  
24 material fact as to the seventh *Shamrock* factor.

25 *Whether the Inventor/Assignor Was in Charge of the Infringing Operation.* It is undisputed  
26 that Szeto is now the Senior Director of Software. It is also undisputed that Szeto was involved in  
27 the design of the AX Series, in that he “wrote some code for the AX Series device” and “provided  
28 some input on the ‘design framework’” of the AX Series device. Opp’n 4 (citing Nguyen Decl. Ex.

1       8, at 35:3-16; 35:21-23). A10 also concedes that Szeto had a “supervisory” role and that “several  
2       people responsible for the actual coding of the AX Series reported to Szeto.” *Id.* (citing Nguyen  
3       Decl. Ex. 8, at 36:6-37:10). Szeto also admitted that his primary role was “understanding the  
4       market” and in particular what features were offered by the AX Series’ competition. Nguyen Decl.  
5       Ex. 8, at 33:16-34:13. A10 attempts to raise a genuine dispute of material fact by emphasizing that  
6       the activity accused of infringing is not a software operation. This fact is immaterial, however,  
7       because it is undisputed that Szeto had a supervisory role over the development of the AX Series  
8       device. Accordingly, A10 has failed to raise a genuine dispute as to this eighth and final *Shamrock*  
9       factor that would preclude a finding of privity between Szeto and A10. *See, e.g., Mentor Graphics,*  
10      150 F.3d at 1379; *see also Synopsis*, 2005 WL 1562779, at \*6.

11       In sum, the Court has considered the *Shamrock* factors and finds that they either  
12      indisputably weigh in favor of finding that Szeto and A10 are in privity, or A10 has failed to raise a  
13      *genuine* dispute over a fact that would preclude a finding of privity here. Moreover, although the  
14      precise scope of Szeto’s contribution to the AX Series is contested, it is undisputed that Szeto  
15      wrote code, managed other coders, and played an important role in determining what features  
16      should be included or added to the AX Series. After considering all of the undisputed facts, the  
17      Court is compelled to conclude that A10 “availed itself of [Szeto’s] ‘knowledge and assistance’” in  
18      developing the AX Series device. *Intel*, 946 F.2d at 839 (quoting *Shamrock*, 903 F.2d at 794).  
19      Accordingly, the Court finds that Szeto and A10 are in privity, and A10 is therefore estopped from  
20      arguing that the ’833 Patent is invalid.

### 21                   **3. Privity of Jalan and Szeto with Chen**

22       At the June 8, 2012 hearing, A10 expressed doubts that a court could find privity between  
23      individuals for purposes of assignor estoppel. Tr. 52:19-21. However, Federal Circuit precedent  
24      recognizes that privity can exist between two individuals just as it can exist between an individual  
25      and a company. As the Federal Circuit recognized in *Intel*, privity has been found between  
26      assignors and others who availed themselves of an assignor’s knowledge and assistance to conduct  
27      infringement. 946 F.2d at 839 (citing *Mellor v. Carroll*, 141 F. 992, 994 (C.C.D. Mass. 1905); *see*  
28      also *Shamrock*, 903 F.2d at 793 (noting that privity can be found between assignor and co-

1 developer of infringing device with company they formed to advance their interests in infringing  
2 device) (citing *U.S. Appliance Corp. v. Beauty Shop Supply Co.*, 121 F.2d 149, 151 (9th Cir.  
3 1941)). The Court must consider “all contacts . . . direct and indirect” between Chen, Jalan, and  
4 Szeto, including contacts between A10 and Jalan and Szeto, and the contacts between A10 and  
5 Chen. *Intel*, 946 F.2d at 838. Plaintiffs need not establish that Chen is A10’s alter ego as a  
6 prerequisite to considering the contact between A10 and the assignor/inventors in its privity  
7 analysis. *Id.* at 837 (rejecting “alter ego” test). As discussed below, Chen’s close relationships  
8 with Jalan and Szeto and strong control over A10 support a finding of privity between Jalan and  
9 Chen, and between Szeto and Chen.

10 The undisputed facts are as follows. Chen owns over 27% of A10. *See* Nguyen Decl. Ex.  
11 16, at 67:7-15 (Cochran Dep.). Chen founded Raksha in 2004 and later renamed the company  
12 A10. Opp’n 2. From founding the company in 2004 through 2011, Chen served as the company’s  
13 director, President, CEO, and CFO. *See id.* at 72. It is similarly undisputed that Chen made the  
14 decisions to hire Jalan and Szeto personally. Nguyen Decl. Ex. 1 at 155:21-156:3 (Chen Dep.)  
15 (discussing the decision to hire Jalan); *id.* at 51:22-52:24 (discussing decision to hire Szeto). Chen  
16 has publically claimed to possess particular skill in building strong engineering teams, like the  
17 team Chen assembled at A10. *See* Nguyen Decl. Ex. 21, at 13 (“building engineering teams is one  
18 of my strengths”).

19 It is also undisputed that Chen is involved in technical decision-making, beyond making  
20 initial staffing decisions. Jalan himself testified that “I always needed approval from Mr. Chen.”  
21 Nguyen Decl., Ex. 4 at 261:4-14 (Jalan Dep.). Similarly, Yang testified that Chen was the ultimate  
22 authority on technical decisions. Gambhir Decl., Ex. 1 at 27 (Yang Dep.). In his role as CEO,  
23 Chen must approve all major updates to the AX Series. *See* Nguyen Decl., Ex. 13 at 23-24 (A10  
24 Networks Update and QA Process). Furthermore, Jalan testified in his deposition that Chen made  
25 the decision to “add global server load balancing capabilities to the AX.” Nguyen Decl., Ex. 4 at  
26 129:8-19 (Jalan Dep.). Plaintiffs argue that Chen also made the decision to include HA  
27 capabilities, citing a Chen email on product design stating, “HA – yes we need to have it.” Nguyen  
28 Decl., Ex. 19 at 1. A10 has not disputed that Chen authorized these allegedly infringing features of

1 the AX Series. Chen also has personal contacts with Jalan, a “friend” of Chen’s. Op. at 3. *See*  
2 *also id.* at 11, 14.

3 Chen’s high degree of control over A10; Chen’s large ownership stake in A10; Chen’s  
4 personal decision to hire Jalan; Chen’s ongoing control over Jalan’s technical work; Chen’s  
5 authorization of AX components allegedly infringing the ’195, ’009, and ’500 Patents; and Chen’s  
6 personal relationship with Jalan are undisputed. These facts, in addition to the contacts between  
7 A10 and Jalan discussed in Section III.B.1, are sufficient to support a finding of privity between  
8 Jalan and Chen. Similarly, Chen’s control over A10; Chen’s ownership stake in A10; Chen’s  
9 personal decision to hire Szeto; Chen’s ongoing technical input over the AX Series; and Chen’s  
10 control over the AX Series development are also undisputed. These facts, in addition to the  
11 contacts between A10 and Szeto discussed in Section III.B.2, are sufficient to support a finding of  
12 privity between Szeto and Chen. A10 has not raised any factual disputes that would preclude a  
13 finding of privity between Chen and Jalan or between Chen and Szeto.

14 Accordingly, the Court finds that Chen is in privity with both Jalan and Szeto and is  
15 therefore estopped from challenging the validity of the ’195, ’009, ’500, and ’833 Patents.

#### 16 **4. Privity between Jalan and Szeto**

17 In its analysis of whether there is privity between Jalan and Szeto, the Court considers “all  
18 contacts . . . direct and indirect” between Jalan and Szeto to determine whether they availed  
19 themselves of each other’s “knowledge and assistance to conduct infringement.” *Intel*, 946 F.2d at  
20 839.

21 It is undisputed that Jalan and Szeto both had high level roles in developing the AX Series.  
22 As discussed above, Szeto has been an A10 Director of Software since 2005 and a Senior Director  
23 of Software since 2011. Jalan has been A10’s CTO since 2008. It is undisputed that Jalan  
24 participated in design discussions and code reviews and provided some input on the design  
25 framework of the AX series device. Jalan testified that Szeto was a member of the team with  
26 which Jalan discussed AX Series design in 2005. Nguyen Decl. Ex. 4, at 19:6-24 (Jalan Dep.). As  
27 discussed above, it is undisputed that Szeto wrote code for the AX Series device, provided input on  
28 the design framework, and supervised people responsible for the coding of the AX Series device.

1 It is also undisputed that Jalan and Szeto both have considerable ownership stakes in A10. Having  
 2 considered all of the undisputed direct *and* indirect contacts between Jalan and Szeto, the Court is  
 3 compelled to conclude that Jalan and Szeto availed themselves of each other's "knowledge and  
 4 assistance" to develop the accused AX Series device. *See Intel*, 946 F.2d at 839. Thus, the Court  
 5 finds that Jalan and Szeto are in privity with each other.

6 Accordingly, Jalan may not challenge the validity of the '833 Patent.<sup>3</sup>

7 **IV. CONCLUSION**

8 No genuine dispute of material fact exists that Jalan and Szeto are subject to assignor  
 9 estoppel with respect to their patents; that A10 is in privity with Jalan and Szeto; that Chen is in  
 10 privity with Jalan and Szeto; or that Szeto and Jalan are in privity with each other. Accordingly,  
 11 the Court GRANTS Plaintiffs' Motion for Partial Summary Judgment Dismissing Invalidity  
 12 Declaratory Relief Counterclaims and Invalidity Affirmative Defenses as follows:

- 13 1. Defendant A10's invalidity counterclaims and invalidity affirmative defenses as to the  
 14 '195, '009, '500, and '833 Patents are DISMISSED.
- 15 2. Defendant Chen's invalidity affirmative defenses as to the 195, '009, '500, and '833  
 16 Patents are DISMISSED.
- 17 3. Defendant Jalan's invalidity affirmative defenses as to the '195, '009, '500, and '833  
 18 Patents are DISMISSED.

19 **IT IS SO ORDERED.**

20  
 21 Dated: June 18, 2012



22 LUCY H. KOH  
 23 United States District Judge

24  
 25  
 26  
 27 <sup>3</sup> As noted above, Szeto is not named as a defendant on Plaintiffs' patent infringement claims.  
 28 Therefore, Szeto does not have any affirmative defenses to Plaintiffs' patent infringement claims.  
 Moreover, only A10 and not Szeto, Jalan, or Chen has raised any invalidity counterclaims.